

SONNENSCHN NATH & ROSENTHAL LLP  
2121 N. California Blvd., Suite 800  
Walnut Creek, California 94596  
(925) 949-2600

GARY SOTER (State Bar No. 67622)  
PEARSON, SIMON, SOTER, WARSHAW &  
PENNY, LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, California 91403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104  
Email: gsoter@psswplaw.com

Attorneys for Plaintiff  
MICHELLE FANUCCI

MICHAEL BARNES (State Bar No. 121314)  
SONIA MARTIN (State Bar No. 191148)  
CHRISTOPHER WINDLE (State Bar No. 141123)  
SONNENSCHN NATH & ROSENTHAL LLP  
2121 N. California Blvd., Suite 800  
Walnut Creek, California 94596  
Telephone: (925) 949-2600  
Facsimile: (925) 949-2610  
Email: mbarnes@sonnenschein.com  
smartin@sonnenschein.com  
cwindle@sonnenschein.com

Attorneys for Defendant  
ALLSTATE INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MICHELLE FANUCCI,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,  
MICHAEL B. BALDWIN, and DOES 1  
to 50,

Defendants.

No. CV-082151 EMC

JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER

Date: August 6, 2008  
Time: 1:30 p.m.  
Place: Courtroom C, 15<sup>th</sup> Floor  
Before: Hon. Edward M. Chen

Pursuant to Federal Rule of Civil Procedure 26(f) and Civil L.R. 16-9(a), the parties submit this Joint Case Management Statement and Proposed Order with respect to the Case Management Conference set for August 6, 2008, and request that the Court adopt it as the Case Management Order.

1       **1. Jurisdiction and Service:**

2           Plaintiffs filed this action in Napa County Superior Court. Allstate Insurance Company  
3 removed it to this Court pursuant to 28 U.S.C. sections 1332, 1441(a), and 1446. This Court has  
4 original jurisdiction over the Superior Court Action under 28 U.S.C section 1332, as plaintiff  
5 and Allstate are citizens of different states and the amount in controversy exceeds \$75,000,  
6 exclusive of interest and costs.

7           All parties have been served.

8       **2. Facts:**

9           Allstate insured plaintiff Michelle Fanucci under her father's auto policy, which provided  
10 \$250,000 in underinsured motorist coverage. Ms. Fanucci, a pedestrian, was struck by an  
11 automobile on January 18, 1997. The at-fault driver carried \$100,000 in liability coverage,  
12 which was paid to Ms. Fanucci. She then demanded the balance of her underinsured motorist  
13 coverage from Allstate. Because Ms. Fanucci and Allstate could not agree on the value of her  
14 claim, the dispute was submitted to arbitration, at which Ms. Fanucci was awarded  
15 \$1,418,014.07. Following the arbitration, Allstate paid its \$150,000 net policy limit under Ms.  
16 Fanucci's auto policy. She now demands that Allstate pay an additional \$1 million under her  
17 father's personal umbrella policy with Allstate.

18           Ms. Fanucci alleges Allstate is estopped from denying underinsured motorist coverage  
19 under the umbrella policy because its agent, Michael Baldwin, allegedly advised her father in  
20 1987 that the umbrella policy would supplement each of the underlying auto coverages. Finally,  
21 Ms. Fanucci asserts bad faith delay in payment of the \$150,000, claiming Allstate should not  
22 have required her to go through arbitration to recover the underinsured motorist benefits.

23           On the basis of these allegations, Ms. Fanucci asserts claims for declaratory relief, breach  
24 of contract, breach of the implied covenant of good faith and fair dealing, negligence and  
25 negligent misrepresentation. She seeks special damages totaling \$1,035,257.51, general and  
26 punitive damages, attorneys' fees, prejudgment interest and costs of suit.

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1           **3.     Legal Issues:**

- 2                 1.     Is Allstate estopped from disputing coverage under its umbrella policy  
3                         based on the conduct of its agent?  
4                 2.     Can coverage be created by estoppel?  
5                 3.     Does the statute of limitations bar plaintiff's claim?  
6                 4.     Was Mr. Baldwin negligent?  
7                 5.     Did Mr. Baldwin breach a duty of care?

8           **4.     Motions:**

9           Allstate may move for summary judgment or partial summary judgment.

10          **5.     Amendment of Pleadings:**

11          None anticipated.

12          **6.     Evidence Preservation:**

13          The parties have taken appropriate steps to ensure the preservation of evidence.

14          **7.     Disclosures:**

15          The parties will serve their initial disclosures on or before July 23, 2008.

16          **8.     Discovery:**

17          The parties plan to conduct discovery regarding all allegations in the complaint. The  
18          parties anticipate propounding written discovery and deposing the parties and other relevant  
19          witnesses. The parties do not believe any deviation from the discovery guidelines set forth in  
20          the Federal Rules of Civil Procedure is necessary at this time.

21          **9.     Related Cases:**

22          There are no pending related cases.

23          **10.    Relief:**

24          Plaintiffs' Statement

25          Plaintiff seeks (1) a declaration that Allstate is estopped to deny underinsured motorist  
26          coverage under the automobile policy, (2) special damages \$1,035,257.51, (3) general damages,  
27          (4) attorneys fees, and (5) punitive damages.  
28

Defendant's Statement

Allstate seeks judgment in its favor and recovery of its costs.

**11. Settlement and ADR:**

The parties have not filed a "Stipulation and Proposed Order" selecting an ADR process but jointly request assignment to the Early Neutral Evaluation program.

**12. Consent to Magistrate:**

The parties consent to the assignment of this action to Magistrate Judge Edward Chen.

**13 Other references:**

The parties do not believe any other reference is necessary at this time.

**14. Narrowing of Issues:**

The parties believe it is premature to narrow the issues through stipulation at this time. However, as discovery progresses, the parties will re-evaluate this issue.

**15 Scheduling:**

The parties propose the following schedule for discovery, motions and trial:

Exchange of Initial Disclosure:	July 30, 2008
Non-expert discovery cut-off:	December 15, 2008
FRCP 26(a)(2) expert disclosures:	December 22, 2008
FRCP 26(a)(2) rebuttal disclosures:	January 12, 2009
Expert discovery cut-off:	February 6, 2009
Dispositive pre-trial motion hearing cut-off:	March 15, 2009
Pretrial conference statement:	April 22, 2009
Pretrial conference:	April 29, 2009

**16. Trial:**

The parties request a trial date of May 11, 2009.

**17. Disclosure of Non-party Interested Entities or Persons:**

Allstate in not aware of any interested parties required to be disclosed pursuant to Northern District Local Rule 3-16.

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1 Dated: July 23, 2008

PEARSON, SIMON, SOTER, WARSHAW &  
PENNY, LLP

2  
3 By /s/ GARY SOTER  
4 GARY SOTER

5 Attorneys for Plaintiff  
6 MICHELLE FANUCCI

7  
8 Dated: July 23, 2008

SONNENSCHN NATH & ROSENTHAL LLP

9  
10 By /s/ SONIA MARTIN  
11 SONIA MARTIN

12 Attorneys for Defendant  
13 ALLSTATE INSURANCE COMPANY

**[PROPOSED] CASE MANAGEMENT ORDER**

The case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition, the Court orders:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Edward M. Chen  
United States Magistrate Judge

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